IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No 64 of 2004
in
COMPANY APPLICATION No 99 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAMODAR KISHAN SHIRKE

Versus

O.L.OF GUJARAT STATE TEXTILE CORPN. LTD.

Appearance:
1. O.J.APPEAL No. 64 of 2004
MR ANKUR Y OZA for Appellant No.
MR RM DESAI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 03/05/2005

ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE R.S.GARG)

Heard learned counsel for the parties. Present is an appeal under section 483 of the Companies Act against order dated 30.09.2004 passed in Company Applications No.99 of of 2004 and 100 of 2004 filed by the present appellant seeking intervention of the Court, whereunder the learned Single Judge has directed the petitioners to vacate the premises and hand over the same to the Official Liquidator in view of the liquidation of the company.

2. It is submitted by learned counsel for the appellant that in all 69 persons are occupying the premises belonging to the company, but the Official Liquidator has sought permission against the appellant only, therefore and as no order of eviction has been passed against others the appellant cannot be evicted. It is further submitted that in view of the language employed in section 468 of the Companies Act as no requirement is proved by the Official Liquidator appellant cannot be evicted.

3. To counter the said arguments Mr.Desai, learned counsel for the Official Liquidator submitted that others could not be evicted as they had filed Special Civil Application No.83 of 2000 and the Official Liquidator would take the same and similar action against those who are occupying the premises after dismissal of Special Civil Application No.83 of 2000. Mr.Desai also submitted that the Official Liquidator would not discriminate amongst the occupants, but he has to evict everybody, to see that property is sold in accordance with law. His submission is that in accordance with section 468 of the Companies Act the Official Liquidator would not prove his requirement but is required to ask the occupant to hand over possession. It was submitted by learned counsel for the appellant that the Company Court may be asked to settle the property in favour of the occupants so that they are not thrown away from the premises which are in their occupation for long. This argument has also been contested by learned counsel for the Official Liquidator submitting that as and when property is put to auction for being sold the appellant can lodge his claim before the learned Single Judge.

4. True it is, that an action has been taken only against the appellant at this stage, but it is not necessary for us to dwell upon the said pleadings or arguments in view of the submission made by Mr.Desai and after filing of Special Civil Application No.83 of 2000,

similar action would be taken against everybody.

5. So far as proving requirement is concerned it is to be seen that present is not a matter relating to Rent Act where landlord is required to prove bona fide of his requirement. Present is a matter where the Official Liquidator is requiring the occupants to hand over possession. The word 'require' used in section 468 of the Companies Act does not mean that there is personal requirement of the Official Liquidator, but the word simply means that the Official Liquidator would ask, would compel or would oblige the occupant under law to hand over possession of the property to the Official Liquidator.

6. So far as settlement of the property is concerned we are afraid that we cannot pass any orders on the said request made by the appellant. Mr.Desai is absolutely justified when he says that the petitioner/ appellant can lodge his claim for settlement of property in his favour when the same is placed for action. The appellant would be free to lodge his claim as and when property/ properties are proposed to be sold.

7. We find no reason to interfere in the matter. The appeal is dismissed.

8. The appellant is however, given two months time to vacate the premises.

(R.S. Garg, J.)

(Ravi R. Tripathi, J.)

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